



Federal Communications Commission
Washington, D.C. 20554

DA 03-1582
May 12, 2003

Via Certified Mail, Return Receipt Requested

John C. Aegerter
PO Box 665
Elm Grove, WI 53122-0665

Dear Mr. Aegerter:

This letter responds to your March 21, 2003 electronic mail requesting a waiver of the filing deadline for submission of your short-form application (FCC Form 175) to participate in Auction No. 48.¹ You claim that you missed the filing deadline of March 21, 2003, 6:00 PM (ET)² because you encountered a server error message at approximately 5:55 PM (ET) while you were trying to submit your Form 175. For the reasons set forth below, we deny your waiver request.

To obtain a waiver of the Commission's competitive bidding rules,³ an applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that the grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.⁴

The Commission established the March 21, 2003, 6:00 PM (ET) deadline for filing short-form applications for Auction No. 48 in a Public Notice released on December 20, 2002.⁵ The Commission also announced in the *Auction No. 48 Procedures Public Notice* that applications could be filed at any time beginning at noon on March 6, 2003 until 6:00 PM on March 21, 2003.⁶ The Commission also

¹ Electronic mail from John C. Aegerter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, dated March 21, 2003 at 6:50 p.m. ("Waiver Request")

² See Auction of Licenses for Lower and Upper Paging Bands Auction Scheduled for May 13, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 27,799 (2002), 68 Fed. Reg. 6151 ("*Auction No. 48 Procedures Public Notice*").

³ 47 C.F.R. § 1.2105(a).

⁴ 47 C.F.R. § 1.925.

⁵ *Auction No. 48 Procedures Public Notice*, 17 FCC Rcd at 27,813, 27,821 .

⁶ *Id.*, at 27,821.

warned that late applications will not be accepted.⁷ To facilitate filing, the Commission enabled applicants to submit applications via the Internet 24 hours per day.⁸

You contend that your failure to timely submit your short-form application was due to a server error message you encountered at approximately 5:55 PM (ET) on the day of the filing deadline. You further contend that you contacted the FCC's Technical Support Hotline and attempted to submit the short-form application again, but the 6:00 PM deadline had passed before you completed your submission. Finally, you suggest that the Commission should not require short-form applicants to submit attachments to their Form 175.

Based on the record before us, you have not satisfied the Commission's criteria for granting a waiver of the short-form application deadline. The Commission set the deadline pursuant to Section 1.2105(a)(1).⁹ The rule's underlying purpose is to establish a fixed date by which all applicants interested in participating in the auction must provide the Commission with relevant information.¹⁰ Among other things, using a fixed date also provides the Commission with sufficient time to review applications prior to the auction and identifies the pool of potential bidders. You have not shown that enforcing the deadline in this case would frustrate these purposes, or would not serve them.

In addition, you have not demonstrated unique facts or circumstances that merit granting a waiver in this case. You have failed to provide any particular facts or other evidence that would demonstrate that you were prevented from timely submitting a short-form application by the March 21, 2003 deadline. You have not alleged any circumstances that are different from those that applied to all applicants to participate in Auction No. 48. The Commission's rules and public notices provided comprehensive notice of filing procedures for Auction No. 48, including detailed instructions on the information required to be included in the attachments to the Form 175.¹¹ Moreover, the Commission specifically cautioned applicants to file early and allow adequate time for filing their applications.¹² The Commission's records indicate that you logged in and initiated the application process only 36 minutes before the short-form filing deadline. Finally, your belief that the Commission should develop a short-form application process that does not require the uploading of attachments is not a sufficient basis on which to grant a waiver.

⁷ *Id.*

⁸ Access to the Commission's Auction systems was unavailable from 5 PM on Saturday, March 8, 2001 until 9 AM on Sunday, March 9, 2003 to facilitate necessary maintenance.

⁹ 47 C.F.R. § 1.2105(a)(1).

¹⁰ *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, ¶¶ 161-68 (1994).

¹¹ *See Auction No. 48 Procedures Public Notice*, 17 FCC Rcd at 27,846-855.

¹² *Id.*, at 27,821.

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Accordingly, your request for a waiver of the short-form application filing deadline for Auction No. 48 is denied. This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.¹³

Sincerely,

Margaret Wiener
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹³ 47 C.F.R. § 0.331.